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10/828,567

04/21/2004

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EXAMINER

VAINBERG, SIMON

ART UNIT

PAPER NUMBER

1709

MAIL DATE

DELIVERY MODE

05/14/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/828,567

Applicant(s)

SPIESMAN, CRAIG

Examiner

Simon Vainberg

Art Unit

1709

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 21 April 2004.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flappan (US 2002/0177236) in view of Clayton (US Patent 5582298).

Claim 1. A mold test kit comprised of:

- a) a foldable sheet of paperboard having leafs that can be folded into a multi-ply folder / mailer;
- b) at least one paperboard slide perforatedly attached to the paperboard, said slide having a window with a pane that is a relatively tacky adhesive, supported on a clear

film;

c) a removable cover slip that covers the window;

d) a reversibly attachable slide mounting zone with a filmic release layer for sending slides having sampled mold to a laboratory for analysis; and

e) printed instructions for use.

Flappan teaches all limitations for parts "a" and "c-e" of claim 1 except for part "b" that does not teach that at least one paperboard slide is perforatedly attached to the paperboard.

Regarding part "a" of claim 1 Flappan teaches a foldable sheet of paperboard having leafs that can be folded into multi-ply folder/mailer (see Fig.3, paragraph 10 line 4).

Regarding part "b" Flappan discloses that each slide (called test tape) has a transparent window with adhesive material supported on a clear film to collect sample of mold (see Fig.2 number 120, paragraph 0005 lines 3,4 and Abstract lines 3-5).

Regarding part "c" Flappan discloses a removable cover slip that covers the window.

Although Flappan calls the cover slip a "removable backing" (see Fig.1 number 110 and paragraph 0020 lines 1-3), it can be considered the same as the cover slip, since it fulfils the same purpose of covering the window of the slide (see Fig.1 number 120) and releases the sticky part of the window when it is removed from slide. Similarly, the word "slide" is, for these purposes, analogous to the "tape" referenced in Flappan (see Fig.2) because they perform the same functions.

Regarding part "d", Flappan discloses a reversibly attached slide mounting zone (see Fig. 3 number 210 and Abstract line 3). Flappan does not teach specifically that the

mounting zone should have a filmic release layer, but it does teach that test tape can be releasably attached to mounting zone for such purposes as the analysis of the collected specimen on the test tape and provide further storage of the sample (see Fig. 5 number 130 and Abstract line 3).

Regarding part "e" Flappan discloses printed instructions for use, which are included in the mold detection kit (see Fig.3 "Instructions").

Regarding part "b" the second reference Clayton et al. teaches that slides of the sampling kit (called components with window and adhesive area (see Fig.2 number 40 and column 3 line 24) are intended to be separated from one another along the transverse lines of weakening. The transverse lines of weakening are made up of perforations in the sheet (see column 2 lines 67 and column 3 lines 1-5). Clayton et al. also teach that paper, card stock, or the like materials can be used for making sheet and slides (see column 2 line 56).

It would have been obvious to one having ordinary skill in the art at the time of invention was made to modify the mold detection kit of Flappan by perforatedly attaching paperboard slides with adhesive window to a paperboard as taught by Clayton et al. Such modification would be made easily by making the slides out of the same material as the paperboard card. This would allow a more convenient storage of the slides on the paperboard, prior to their detachment for mold sampling.

Claim 2. A mold test kit according to claim 1 further comprising: a low tack adhesive, wherein said low tack adhesive is deposited on the periphery of the at least one

paperboard slide and augments the relatively tacky adhesive to adhere the cover slip to the paperboard slide.

The Flappan and Clayton et al. references disclose the claimed invention according to claim 1 but they do not teach directly that low tack adhesive is deposited on the periphery of the slide. Instead Flappan teaches that each tape includes a releasable adhesive on the surface adjacent the backing 110" (see page 2 column 1 line 2 and 3, and see paragraph 0020 line 1 and 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the low tack adhesive to the periphery of the slide to reduce consumption of the adhesive and provide easy removal of the cover slip (backing) from the slide.

Claim 3. The mold test kit as claimed in claim 1, wherein said relatively tacky adhesive supported on a clear film is a transparent pressure sensitive adhesive tape having a sufficient width and length to span the paperboard window, thereby providing the pane with the relatively tacky adhesive.

Flappan and Clayton references disclose the claimed invention according to claim 1 except they do not directly indicate that relatively tacky adhesive supported on a clear film is a transparent pressure sensitive adhesive tape having a sufficient width and length to span the paperboard window, thereby providing the pane with the relatively tacky adhesive. However Flappan discloses that the tape has a transparent sticky window to attach mold sample (paragraph 0005 lines 4-8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the

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sticky transparent window by applying one-sided transparent sticky tape such as Scotch tape under the die cut window in the paperboard because it allows to collect any particles from the solid surface.

Claim 4. The mold test kit as claimed in claim 3, wherein said reversibly attachable slide mounting zone is comprised of: a pressure sensitive adhesive target tape adhered to the foldable sheet of paperboard; a slide mounting adhesive that is a longitudinal coating of pressure sensitive adhesive that is adjacent to an edge of the pressure sensitive adhesive target tape; and a release liner that protectively covers the slide mounting adhesive.

With respect to the above-mentioned claim 3 references Flappan and Clayton et al. teach all limitations of claim 4. Clayton et al. teaches that the foldable placard (12) has an adhesive area (40) covered with a release liner (60) (see Fig. 2 and Fig.4). "The adhesive area and the release liner are defined by a pressure sensitive adhesive label having a release liner and tipped onto the sheet adjacent the opening..."(see column 2 lines12-15).

Clayton et al. also discloses that the mounting zone has a pressure sensitive adhesive labels (42,44,46,48), adhered to the paperboard that has the same function as a tape.

It would have been obvious to one of ordinary skill in the art to combine references Flappan and Clayton et al. by fabricating a protective sticky mounting zone on a mailing paperboard card to gather all the slides in a single place.

Claim 5. A method for using a mailable mold test kit, said method comprising the steps of:

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opening the kit and recording on the kit the areas to be sampled for mold, wherein said mailable mold test kit is comprised of paperboard having leafs;

tearing off a slide along the perforations and peeling back / off the cover slide, therein exposing the window of tacky adhesive;

positioning the window over the area being sampled and pressing the window against the sample area, thereby pushing the tacky adhesive against the mold, enabling the adhesive to collect a sample of the mold;

mounting the slide on a slide mounting zone having a release layer, by exposing a portion of slide mounting adhesive that is coated along an edge of the slide mounting zone and protected with a release liner, by peeling back the release liner, and pressing an edge of the slide down, so that the slide is in contact with the slide mounting adhesive;

recording additional sampling data as needed.

Reference Flappan teaches the claimed invention except for the following steps:

- tearing off a slide along the perforations and peeling back / off the cover slide, therein exposing the window of tacky adhesive;
- mounting the slide on a slide mounting zone having a release layer, by exposing a portion of slide mounting adhesive that is coated along an edge of the slide mounting zone and protected with a release liner, by peeling back the release liner, and pressing an edge of the slide down, so that the slide is in contact with the slide mounting adhesive.



Reference Flappan discloses a opening the kit and recording the areas to be sampled for mold in foldable placard (see "Instructions" on Fig. 3).

Reference Flappan teaches that the window of the tape is pressed against the sample allowing the mold to adhere to the tape within window (see paragraph 005 lines 6-8).

Reference Flappan teaches recording all needed data (see Fig.3 and "Instructions" and page 3 claim 14).

Reference Flappan teaches repeating the sampling until all the samples are collected by providing of plurality of sticky tapes (see page 3 claim 11).

Reference Flappan teaches folding the mailing placard (see "Instruction" number 8 and Abstract line 3) and mailing card with samples to the laboratory for analysis (see paragraph 0020 lines 18,19).

Regarding the step of tearing off a slide along perforations and peeling back the cover reference Clayton et al. teaches removing components ( which, for these purposes, are defined to be the same as slides) from paperboard sheet (see column 2 line 56) along the lines of perforations (see column 3 line 1). Clayton et al. also teaches the removal of the release liner exposing the sampling adhesive area (column 1 lines 65,66).

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Regarding the step of mounting the slide on a slide mounting zone Flappan teaches an attachment of releasable tape (slide) to the slide mounting zone of mailing placard (see Fig. 3 number 210, Abstract line 3) by pressing tape to mounting zone (see paragraph 0005 line 7 and page 3 line 1).

As mentioned above, Flappan does not teach the mounting zone has a release layer and mounting means by exposing a portion of slide mounting adhesive that is coated along an edge of the slide mounting zone and protected with a release liner, by peeling back the release liner, and pressing an edge of the slide down, so that the slide is in contact with the slide mounting adhesive;

Clayton et al. teaches that the paperboard has a layer of pressure sensitive adhesive (see column 1 lines 58-62) and removable release liner (60), which after being pulled out, exposes adhesive area (52) (see column 3 lines 40-42). The adhesive area serves to attach the slide (44) (defined as a label at page 3 lines 25, 26) to the mounting zone (40) located on the placard (see Fig.2 and column 4 lines 7- 9).

It would have been obvious to one of ordinary skill in the art to combine references of Flappan and Clayton et al. by attaching a releasable adhesive layer and removable cover liner to the slide mounting zone in order to protect the adhesive mounting zone of paperboard. Even if the references Flappan and Clayton et al. do not teach directly that adhesive coated along an edge of the slide mounting zone it would have been obvious to one of ordinary skill in the art to apply adhesive in this way to reduce consumption of adhesive and to facilitate the removal of liner.

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Claim 6. A method for using a mailable mold test kit according to claim 5, said method further comprising the steps of:

receiving the sample at the lab;

removing the slide from the mounting zone, and microscopically examining the mold;

analyzing all samples for both mold type and quantity;

remounting the paperboard slide on the slide mounting zone with the mold against the paperboard and storing for further examination if required;

providing the interested parties with the results of the test.

Regarding claim 6 with respect to claim 5 the Flappan teaches receiving the sample at the laboratory removing the slide from mounting zone and microscopically examining the mold, analyzing all samples for both mold type and quantity and providing the results of the test to client (see paragraph 0021-0024).

Flappan teaches remounting the slide on the slide mounting zone for storage (see paragraph 0022 lines 1, 2) but fails to teach that the slide should be made from paperboard.

However, Clayton et al. discloses slides (labels) made from paperboard (see column 2 line 56).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine references Flappan and Clayton by fabricating slide from paperboard. Constructing slide from the paperboard clearly simplifies and reduces the

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cost of manufacturing the mold test kit. Moreover, attaching the slide by perforation to the mailing paperboard cars allows more conveniently storing them.

Additionally, making the slide from different materials based on suitability for the slide's intended use supports a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Simon Vainberg whose telephone number is 571-270-3150. The examiner can normally be reached on Monday- Thursday 7:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

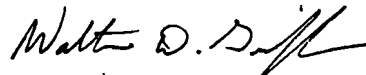
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04/25/2007

A handwritten signature in black ink, appearing to read "Walter D. Griffin", with a stylized flourish at the end.

**WALTER D. GRIFFIN**  
**SUPERVISORY PATENT EXAMINER**